

D.R. No. 2007-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

NEW JERSEY TRANSIT,

Public Employer,

-and-

Docket No. RD-2007-5

CERTAIN EMPLOYEES OF NEW JERSEY TRANSIT,

Petitioner,

-and-

TRANSPORT WORKERS OF AMERICA,

Employee Representative.

SYNOPSIS

The Director of Representation directed a mail ballot election be conducted amongst certain New Jersey Transit employees even where none of the parties opposed an in-person election. The Director determined that a mail ballot election would maintain the laboratory conditions needed in the election, and found an insufficient basis existed to justify the greater use of Commission resources needed to conduct an in-person election.

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Appearances:

For the Public Employer,
Stuart Rabner, Attorney General
(Richard Schleifer, Deputy Attorney General)

For the Petitioner,
Joffrey Hill, attorney

For the Employee Representative,
Maureen Stamp, attorney

DECISION AND DIRECTION OF ELECTION

On December 29, 2006, certain employees of New Jersey Transit (NJT) filed a Petition seeking to decertify Transport Workers of America Local 225 (TWU) as the exclusive representative of NJT's bus operators, maintenance and field personnel at the Fairview Garage. All parties have consented to a secret ballot election, but disagree over whether the election

should be conducted by mail ballot or in-person at a designated polling place.

FINDINGS OF FACT

TWU is the certified representative of a negotiations unit of maintenance employees, bus operators, and salaried field employees at NJT's Fairview Garage. There are about 214 employees in the unit. On December 29, certain unit employees filed a Petition seeking to decertify TWU and have no employee representation. The Petition is timely filed and supported by an adequate showing of interest. TWU was permitted to intervene in this matter based upon its recent contract covering the unit employees through July 31, 2005.^{1/}

A similar decertification petition was filed in 2005, and a secret ballot election was conducted by in-person vote at the Fairview Garage from 7 to 11 am and 1 to 5:30 pm. 180 of the 183 eligible employees at that time voted in that election. TWU prevailed and was recertified as the majority representative on November 16, 2005. No successor agreement has been negotiated.

^{1/} TWU initially urged an in-person election. Upon being advised by the Commission agent that the Director of Representation would likely disapprove a Consent Agreement for in-person balloting absent compelling circumstances, TWU signed a consent agreement for a mail ballot election. NJT refused to sign the mail-ballot consent agreement, upon which TWU rescinded its consent and now argues for in-person voting.

Accordingly, the one-year certification bar has expired and the Petition is timely filed.

All parties agree to permit the Commission to conduct a secret ballot election among the unit employees. They have agreed that unit employees on the payroll as of January 25, 2007 are eligible to vote. On February 6, 2007, NJT filed an alphabetized list of eligible voters, together with their last known mailing addresses and job titles. Copies were also sent to the other parties. N.J.A.C. 19:11-10.1. All parties have agreed that the ballot will be printed in English and Spanish.

NJT and TWU argue that the election should be conducted by in-person balloting at the Fairview Garage. Although the Petitioner initially favored in-person balloting, it also signed a Consent Agreement for a mail ballot election.

ANALYSIS

New Jersey Transit argues that a mail ballot election could lead to unintended results and "give rise to claims of election impropriety and unfairness," which may "negatively impact work product and management-labor relations." TWU contends that reliable addresses for the unit employees are not available, citing its recent mailing with employer-provided addresses, resulting in about 40% of it returned as "undeliverable." NJT asserts that it is unaware of inaccurate employee addresses. TWU contends that all of the petitioned-for employees report to the

Fairview Garage and have fixed work schedules, creating a likelihood that an in-person vote will maximize voter turnout.

N.J.S.A. 34:13A-6(d) empowers the Commission to resolve questions concerning the representation of public employees through the conduct of a secret ballot election. N.J.A.C. 19:11-10.3, Election Procedures, provides:

(a) All elections will be by secret ballot The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

In this case, the parties have stipulated to all of the terms of a Consent Election Agreement for the unit except for the election mechanics. Accordingly, the methodology of the election is within my discretion.

In City of Newark, D.R. No. 2007-1, 32 NJPER 262 (¶107 2006), I wrote that our mission is to conduct free and fair elections within a reasonable time and cost. When laboratory conditions for elections can be adequately met through the conduct of elections by mail, we will use that method, particularly when the financial and human resource costs to the Agency in conducting in-person elections are unjustified. Citing County of Bergen, D.R. No. 2003-9, 28 NJPER 463 (¶33170 2002), I reiterated the numerous factors which determine the election methodology:

- (1) Scattering of voters due to job duties over wide geographic area;

- (2) Scattering of voters due to significantly varying work schedules preventing presence at common location at common time;
- (3) Whether a strike, lockout, or picketing is in progress;
- (4) Desires of all the parties;
- (5) Likely ability of voters to read and understand mail ballots;
- (6) Availability and accuracy of addresses for employees;
- (7) Efficient and economic use of Commission agents and resources;
- (8) Size of the unit;
- (9) Potential disruption to employers and employees by conducting in-person elections;
- (10) Security issues for in-person elections;
- (11) Employee access to telephone and/or internet connections.

In Newark, I determined that an in-person election best served our mission. I was persuaded that the employer was unable to supply reliable home addresses because at least some employees had provided the City false or outdated home addresses in order to comply with the City's residency requirement. Inaccurate addresses would have resulted in the disfranchisement of eligible voters because they would not receive mail ballots.

Here, the petitioned-for employees all report to a single work location, and none of the parties are opposed to in-person voting. However, I must also be mindful of the expenditure of

Commission resources to conduct such a vote: the previous election required staff agents working split polling hours, amounting to an 11½ hour election cycle. The election was conducted in a second-floor conference room of the Fairview facility, creating a difficulty in controlling electioneering in and around the bus garage.

Neither TWU nor NJT has provided documents or other evidence supporting claims that employee addresses are inaccurate. Nor has NJT explained why an election by mail would be "inherently unreliable" or would "give rise to claims of impropriety or unfairness." In fact, in-person voting normally poses a higher risk of election objections than mail balloting, based upon claimed employer interference or improper electioneering.

We safeguard our mail ballot processes. First, we provide a (bi-lingual) Notice of Election for posting which advises eligible employees that an election is being conducted and instructs voters who do not receive ballots to call the Commission to verify or correct their addresses. Second, we accept address correction information and/or requests for duplicate ballot mailings from any party to the election up to two days before the election, and share that information with all other parties. Third, we generally allot two to three weeks between the mailing of the ballots and the date they must be received. Finally, since eligible employees receive their

ballots and vote in the privacy of their homes, employee work schedules and their place(s) of employment are not disrupted. Nor does absenteeism affect voter turnout.

Considering the parties' preferences and arguments, and the apparent facts, I am not persuaded that the circumstances require an in-person election. A free and fair election can be conducted among these employees and laboratory conditions can be maintained through a mail-ballot procedure. Accordingly, I issue the following:

ORDER

An election is hereby directed among the employees in the following unit as stipulated by the parties:

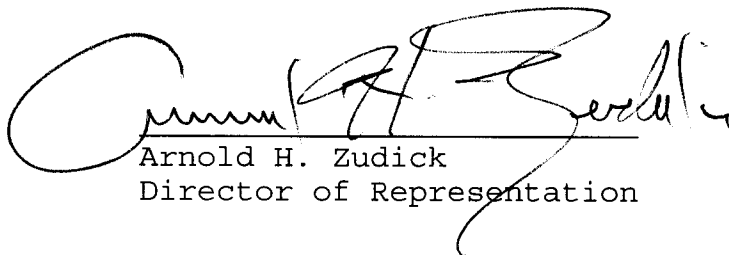
Included: All maintenance employees, bus operators, and field salaried employees employed by New Jersey Transit at its Fairview Garage.

Excluded: Managerial executives, confidential employees, police, supervisors within the meaning of the Act; craft employees, professional employees, and employees at other garages.

Unit employees must have been employed by New Jersey Transit as of January 25, 2007, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote. Employees in the unit described above shall vote on whether they

wish to continue to be represented by Local 225, TWU. Ballots shall be mailed by the Commission to the eligible voters based upon time frames to be determined within the next thirty (30) days. The election shall be conducted in accordance with the Commission's Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Arnold H. Zudick
Director of Representation

DATED: March 5, 2007
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 15, 2007.